IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 290 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
DINESH S RAVAL C/O ALL GUJARAT GENERAL - Respondent(s)

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Appearance :
MR.HL JANI AGP for Petitioner(s) : 1,
MR SHASHIKANT S GADE for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 13/06/2007

ORAL JUDGMENT

1. The petitioner, Executive Engineer under the State Government, has invoked Articles 226 and 227 of the Constitution for issuance of a writ of

certiorari or any other appropriate writ to quash the award dated 17.06.2000 of Labour Court, Kalol in Reference (LCK) No.87 of 1987, whereby the respondent is ordered to be reinstated with full back wages and cost of Rs.250/-. The respondent-workman appears to have approached the Labour Court upon reference of a dispute based on the allegation that he had worked under the petitioner for several years as a clerk on daily wages and his service was illegally terminated with effect from 20.09.1985. It was his own case that he was aware about his proposed transfer and he had requested the Executive Engineer not to transfer him on account of chronic illness of his mother.

1.1. It was the case of the petitioner before the Labour Court that the respondent had worked as helper on daily wage basis from 15.01.1974 to 20.06.1976 and from 21.12.1977 to 05.06.1978 as time-keeper at a different place and, similarly, he was employed as a temporary employee from time

to time. Upon completion of work at the site, the respondent, along with 23 other workmen, was transferred. While the other workmen had accepted the orders of transfer and reported for duty at the new post, the respondent had refused to accept the order of transfer and hence, it was sent to him by R.P.A.D. Admittedly, the petitioner had stopped marking presence of the respondent since 21.09.1985.

1.2. The petitioner had produced written statement along with documents in support thereof which included a copy of the order of transfer and the acknowledgment slip in support of the contention that the order of transfer was duly served through the postal department upon the respondent. The respondent had submitted arguments in writing before the Labour Court and, *inter alia,* submitted therein that the postal acknowledgment slip was false and produced afterwards so as to prove service of the order of transfer. That was in tune with the general

argument of the respondent that the order of transfer was neither communicated nor duly served upon him. A copy of the written arguments was placed on record by learned counsel Mr. Shashikant S. Gade and it was taken on record.

2. In context of the above controversy in a very narrow compass, the petitioner has produced certified true copies of the depositions of the witnesses and a photo-copy of the postal acknowledgment slip on which the address of the respondent is admittedly correct. According to the deposition of one of the witnesses, namely Shri Naranbhai Dahyabhai, Exh.30, the respondent was sought to be served a sealed cover in his presence and he had refused to accept it. Thus, in short, there was sufficient evidence of the order of transfer having been tendered to the respondent and also of it having been served upon him by R.P.A.D.

3. As against the above factual backdrop,

learned Presiding Officer of the Labour Court has, in the impugned award, drawn a finding of fact in favour of the respondent and held not only that the order of transfer was not tendered or served upon him but also that the postal acknowledgment slip produced by the petitioner and exhibited in evidence was not there on the record. After perusal of the written arguments submitted on behalf of respondent, it was fairly conceded by learned counsel Mr.Gade that, according to the submission of the respondent himself, the acknowledgment slip which is held to be missing in the impugned award was very much there and the arguments were addressed on the basis of its existence on record. Certified true copy of the acknowledgment slip produced by the petitioner before this Court after obtaining it from the record of the Labour Court is further proof of the acknowledgment slip being part of record of the Labour Court. Therefore, the impugned award is perverse in that regard and the conclusions drawn and final relief granted in the

impugned award are based on that perverse finding. If the order of transfer were to be taken to have been tendered to the respondent and served upon him, no question of illegal termination would survive but, instead, it would be a case of disobedience of the order of transfer and abuse of the process of Court by making false allegations and averments. When the respondent had not obeyed the order of transfer and the petitioner had not in any way terminated his service, it was a clear case of abandonment of job by the respondent, which dis-entitled him from claiming any relief on the basis of his past intermittent service on daily wage basis. Therefore, the impugned award is required to be set aside as perverse and illegal.

4. Unfortunately, after pendency of the proceedings before the Labour Court for no less than 13 years and after the impugned award granting reinstatement and full back wages, the respondent is stated to have been paid wages

under Section 17B of the Industrial Disputes Act, 1947 by virtue of the order dated 29.01.2002 of this Court. Thus, he is stated to have been paid approximately Rs.30,000/- on account of the impugned award.

5. In the facts and for the reasons discussed hereinabove, the petition is allowed, the impugned award and order dated 17.06.2000 in Reference (LCK) No.87 of 1987 of Labour Court, Kalol is set aside with cost quantified at Rs.5,000/-which shall be paid by the respondent to the petitioner. The office is also directed to call for the original Record and Proceedings of the aforesaid reference case from the Labour Court, Kalol and after verifying the facts discussed hereinabove, make a report for appropriate action on the administrative side. Rule is made absolute accordingly.

(D.H.WAGHELA, J.)

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